IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI THE ACTING CHIEF JUSTICE AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 21781 of 1997

Between:

Wasim Ahmed Khan, S/o. Aziz Ahmed Khan,
R/o. Secunderabad.

..... PETITIONER

AND

1 The Government of India,
Ministry of Health and Family Welfare (Department of Health),
Nirman Bhavan, New Delhi.
2 Director General, Indian Council of Medical Research,
Ansar Nagar, Post Box No.4911,
New Delhi-110029.
3 The Director,
Centre for Cellular and Molecular Biology, Tarnaka,
Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring the action of the respondents in sending the biological products and genetic materials extracted from Indian people to Foreign Countries in the name of modern research, as illegal and unconstitutional and to direct the Respondent No.1 to forthwith pass a blanket ban order from sending all the biological products and genetic materials to Foreign Countries in the name of research or otherwise and to further direct the Respondent No.1 to take stringent and punitive steps against those research centres and individuals who are directly or indirectly indulging in sending the biological products and genetic materials outside India.

Counsel for the Petitioner: Mr.NAZIR AHMED KHAN

Counsel for Respondent Nos.1 & 2: Mr.A.RAJASHEKAR REDDY

ASST.SOLICITOR GENERAL

Counsel for Respondent No.3: Mr.CHINNABASAPPA DESAI

The Court made the following :

ORAL ORDER: (per Sri Bilal Nazki, the Acting Chief Justice)

Heard the learned counsel for the parties.

The writ petition has been filed with the following prayer.

"……..to issue a writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondents in sending the biological products and genetic materials extracted from Indian people to foreign countries in the name of modern research, as illegal and unconstitutional and to direct the respondent No.1 to forthwith pass a blanket ban order from sending all the biological products and genetic materials to foreign countries in the name of research or otherwise and to further direct the respondent No.1 to take stringent and punitive steps against those research centers and individuals who are directly or indirectly indulging in sending the biological products and genetic materials outside India."

Counter affidavits have been filed by the respondents. It is submitted by the respondents that no samples are sent to foreign countries which can be tested in India. Wherever any test is to be carried out on any sample which cannot be done in the country, that sample is sent to various laboratories in the world and for sending such samples, guidelines are in place and guidelines have been issued by second respondent approved by first respondent. Not only the scientific guidelines have been issued, but even ethical guidelines are also issued by the Indian Council of Medical Research. It is also submitted that in some cases, it becomes necessary and imperative to send some samples to certain laboratories across the world because of lack of facilities in the country. Therefore, at this stage, it would not be

possible to impose a complete ban on sending the samples outside the country. Whether facilities exist and are available in India for all types of analysis, which perhaps is not even conceivable or not, is a matter which this Court cannot decide in these proceedings and it is best to leave such a matter for the opinion of experts. The petitioner has also tried to establish that by transfer of genetic material and biological products, there could be certain disadvantages and losses to the country which has been denied by the respondents, and we are not in a position to appreciate whether any disadvantages would occur or it would be advantageous in specific cases as is suggested by the respondents.

With these observations, we dispose of the writ petition.

_____

(BILAL NAZKI, ACJ)

11th July 2005.

_____

(G.CHANDRAIAH, J.)

ARS

To

1 The Secretary to Government of India,
Ministry of Health and Family Welfare (Department of Health),
Nirman Bhavan, New Delhi.
2 The Director General, Indian Council of Medical Research,
Ansar Nagar, Post Box No.4911, New Delhi-110029.
3 The Director, Centre for Cellular and Molecular Biology, Tarnaka,
Secunderabad.

4 Two CD copies.